

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 81 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

FAG PRECISION BEARINGS LTD

Versus

M J SHARMA

Appearance:

MR KS NANAVATI for Petitioner
MR BD KARIA for Respondent No. 1
RULE SERVED BY DS for Respondent No. 2
M/S PATEL ADVOCATES for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/06/2000

ORAL JUDGEMENT

In this petition under Articles 226 and 227 of the Constitution, the petitioner Company has challenged the communication at Annexure "A" to the petition which was issued by the Conciliation Officer & Asstt. Labour Commissioner, Vadodara on 1.10.1987 under Section 33(1)

of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

2. There are two respondents (respondent Nos. 1 and 2) but at the hearing of this petition, the learned counsel for the petitioner states that the dispute with respondent No. 2 is settled as per the award dated 21.11.1996. Now the dispute survives only with respondent No. 1 M.J. Sharma.

3. Respondent Nos. 1 and 2 were dismissed from service after a departmental inquiry for insubordination. The petitioner Company had filed an approval application under Section 33(2)(b) of the Act as case No. 11/86 was pending before the Conciliation Officer for deciding whether respondent Nos. 1 and 2 were protected workmen. The union filed a complaint under Section 33-A of the Act on the ground that the dismissal was connected with the pending dispute. The Conciliation Officer & Asstt. Labour Commissioner took the view that when case No. 11/86 was pending before the Conciliation Officer, the Company had committed breach of Section 33(1) of the Act by not obtaining the necessary permission under the said provision and, therefore, the Company had committed an offence. Explanation was called for from the Company as to why further action should not be taken. Alongwith such notice dated 1.10.1987, the Asstt. Labour Commissioner also sent the order dated 30.9.1987 taking the view that although the union's application for declaring 5 persons as protected workmen including respondent Nos. 1 and 2 was pending before the Conciliation Officer, the Company had passed the orders of dismissal without taking prior permission of the Conciliation Officer and, therefore, there was violation of Section 33(1) of the Act.

4. At the hearing of this petition, the learned counsel for the petitioner has submitted that Makarpura Kamdar Karmachari Union was not recognized by the petitioner Company as a recognised union and that the recognised union was PBI Majdoor Sabha. The members suggested by the said PBI Majdoor Sabha were already granted the status of protected workmen for the year 1986-87 and, therefore, there was no question of granting the status of protected workman on any other person. A reference is also made to the letter dated 9.8.1986 (Annexure "C" - Pg. 24) from the petitioner Company informing the Makarpura Kamdar Karmachari Union that the petitioner Company was opposing the application of the Makarpura Kamdar Karmachari Union for conferring status of protected workmen on the persons suggested by the said

union. A dispute about payment of bonus to the workmen of the petitioner Company (Reference No. 16 of 1985) was pending before the Industrial Tribunal, Baroda. The petitioner Company preferred an application under Section 33(2) of the Act before the Industrial Tribunal in Reference (I.T) Application No. 16/85. As stated earlier, the dispute with regard to respondent No. 2 having been settled, we are not concerned with the dispute between the petitioner and respondent No. 2.

The learned counsel for the petitioner has invited the attention of the Court to the fact that the petitioner Company had dismissed respondent No. 1 from service by order dated 22.4.1986 with effect from 3.4.1986, which was the date of his suspension and the petitioner Company submitted an application before the Industrial Tribunal for approval of the action under Section 33(2)(b) of the Act. Respondent No. 1 took up the plea that he was a protected workman. The Tribunal rejected the application of the petitioner Company by order dated 10.1.1989. The petitioner approached this Court by filing Special Civil Application No. 209/89 and by judgment and order dated 12.7.1996 this Court (Coram: Hon'ble Mr Justice M.R. Calla) allowed the petition and set aside the order of the Tribunal and remanded the matter for reconsideration. The approval application was, therefore, again heard by the Tribunal and after hearing the parties, the Tribunal granted the approval to the dismissal of respondent No. 1 with effect from 22.11.1986 under Section 33(2)(b) of the Act. The learned counsel has produced a copy of the said judgment and order dated 21.11.1996 of the Industrial Tribunal No. 1 at Vadodara.

The learned counsel for the petitioner has, therefore, submitted that in view of the aforesaid clear position and in view of the fact that respondent No. 1 was never declared as a protected workman as such, the impugned notice dated 1.10.1987 at Annexure "A" as well as the impugned order dated 30.9.1987 which is also a part of Annexure "A" cannot survive and deserve to be quashed and set aside.

5. The learned counsel for respondent No.1 states that the dispute was pending before the Conciliation Officer about the status of respondent No. 1 as a protected workman and, therefore, the dismissal of respondent No. 1 for misconduct was connected with the pending dispute and, therefore, the provisions of Section 33(1) were applicable.

6. It is not possible to accept the above contention urged on behalf of the respondent workmen because respondent No. 1 was not declared to be a protected workman. There is no provision of law that the protected workman cannot be dismissed from service. If the workman is a protected workman and if he is to be dismissed from service, then the express permission in writing is required to be obtained from the authority before which any proceeding in respect of an industrial dispute is pending. Hence, it cannot be said that the misconduct or insubordination for which respondent No. 1 came to be dismissed was connected with the dispute whether he was entitled to the status of protected workman.

7. It is submitted in the alternative that in any view of the matter when the proceedings were pending before the Competent Authority about the status of respondent No. 1 as protected workman, atleast the approval of the Competent Authority was required to be obtained and not that of the Tribunal.

This contention also cannot be accepted because there may be half a dozen disputes pending on the date on which the employee is dismissed for misconduct. If the contention were to be accepted, it would be necessary to obtain permission/approval of all such authorities before which the disputes are pending. The object of the provisions of Section 33 is to ensure that the workman is not being victimized for raising industrial disputes. To make such protection effective, it is not necessary that half a dozen authorities before which the disputes are pending should be required to apply their mind. When the Industrial Tribunal is the highest authority under the Industrial Disputes Act, 1947 and has applied its mind and thought it fit to grant the approval, it would not be necessary for the employer to file another approval application before the Conciliation Officer before whom another dispute was pending. Hence, there is no substance in the contention urged by respondent No. 1.

8. There is considerable force in the submission made by the learned counsel for the petitioner regarding the non application of Section 33A of the Act. Apart from the dispute whether respondent No. 1 was entitled to be declared as a protected workman which question is not required to be gone into in these proceedings, the fact remains that there was no order declaring respondent No. 1 as a protected workman and, therefore, the entire base of the notice dated 1.10.1987 for initiating action under Section 33A of the Industrial Disputes Act cannot survive. The petition deserves to be allowed and is accordingly allowed.

The impugned orders dated 30.9.1997 alongwith the impugned notice dated 1.10.1987 at Annexure "A" are quashed and set aside. There shall be no order as to costs.

9. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M.S. Shah, J.)

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